

MEMORANDUM

TO: Foundational Provision Subcommittee Members

FROM: Jim Tomkovicz, Chair

RE: FINAL PROPOSALS ON INTOXICATION AND INSANITY

DATE: July 21, 2009

INTOXICATION

(1) A person is not guilty of an offense if, due to voluntary intoxication, the person did not have the purpose or knowledge required for commission of a crime. A person is not guilty of an offense if, due to involuntary or pathological intoxication, the person did not have any culpability required for commission of a crime.

(2) When an offense requires a culpability other than purpose or knowledge, it is immaterial that a person did not have that culpability as a result of voluntary intoxication.

(3) Intoxication does not, in itself, constitute a mental disease or defect within the meaning of the insanity defense.

(4) Involuntary or pathological intoxication is an affirmative defense if, by reason of such intoxication, the person lacks substantial capacity to know the nature and quality of the person's act or lacks substantial capacity to know the difference between right and wrong in relation to the act.

(5) Definitions:

(a) "intoxication" means a disturbance of the mental or physical capacities resulting from the introduction of substances into the person's body;

(b) "voluntary intoxication" means intoxication caused by substances that the person knowingly introduces into the person's body, the tendency of which to cause intoxication the person knows or ought to know, unless they are introduced pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime;

(c) "pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the person does not know that the person is susceptible.

INSANITY

A person shall not be convicted of a crime if at the time of the conduct that is the basis of the charge the person, as a result of a mental disease or defect, lacks substantial capacity to know the nature and quality of the act the person is committing or lacks substantial capacity to know that the act being committed is wrong. Insanity need not exist for any specific length of time before or after the commission of the alleged criminal act.

The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.